

Message Text

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ACTION EB-07

INFO OCT-01 EUR-12 ISO-00 CAB-02 CIAE-00 COME-00 DODE-00

DOT-00 INR-07 NSAE-00 FAA-00 L-02 SS-15 NSC-05 IO-10

/061 W

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R 271537Z MAR 75

FM AMEMBASSY BONN

TO SECSTATE WASHDC 9013

INFO AMCONSUL MUNICH

LIMITED OFFICIAL USE SECTION 01 OF 02 BONN 05083

E.O. 11652: N/A

TAGS: EAIR, GW

SUBJ: CIVAIR - SEABOARD'S MUNICH AIRPORT PROBLEM

REF: (A) STATE 37623; (B) BONN 4029

1. SUMMARY: TRANSPORT MINISTRY (FMT) MEMO ON SEA-BOARD TRUCKING PROBLEM GIVES A DETAILED BACKGROUND OF THE SITUATION AND REJECTS US POSITION THAT SPECIFIC TRUCKING FEE IS DISCRIMINATORY. MEMO POINTS OUT FRG IS UNABLE TO INTERFERE DIRECTLY SINCE MATTER IS PRESENTLY UNDER CONSIDERATION IN PROVINCIAL (LAND) COURTS. FMT FURTHER INDICATES THAT IN ITS VIEW IATA RESOLUTION 507B AND 512B WERE NOT DESIGNED TO PERMIT PRESENT LEVEL OF SEABOARD TRUCKING ACTIVITIES AND WE HAVE HEARD FROM TRADE SOURCES THAT THE GOVERNMENT IS CONSIDERING REGISTERING RESERVATIONS TO AT LEAST 507B. SUCH ACTION COULD HAVE SERIOUS IMPACT ON AIR CARRIER TRUCKING IN FRG. WE WOULD BE INCLINED TO CONSIDER FURTHER US INITIATIVE ONLY AFTER PRESENT UNCERTAINTIES RE SEABOARD'S FORTHCOMING APPEAL AND NEW MUNICH RENTAL CONTRACTS ARE CLEARED UP. END SUMMARY.

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2. OUR FURTHER READING OF THE FRG TRANSPORT MINISTRY'S (FMT) MEMO ON SEABOARD'S MUNICH AIRPORT PROBLEM (REFTEL) INDICATES THAT THE OCTOBER 21, 1974 MUNICH MUNICIPAL COURT DECISION DID NOT AUTOMATICALLY TAKE EFFECT BECAUSE OF SEABOARD'S APPEAL. CONSISTENT WITH GERMAN LEGAL PROCEDURE, HOWEVER, THE AIRPORT COMPANY WAS ABLE TO OBTAIN A COURT ORDER IMPLEMENTING THE DECISION BY DEPOSITING WITH THE COURT DM 105,000 COLATERAL. IN RESPONSE, SEABOARD'S ATTORNEYS PROPOSED AN INTERIM ARRANGEMENT TO PERMIT THE CARRIER TO CONTINUE TRUCKING BY PAYING A SPECIAL FEE INTO AN INTEREST BEARING ACCOUNT. THIS FEE--ORIGINALLY SET AT DM .09 PER KILO AND LATER REDUCED TO DM .05 PER KILO--WOULD BE REFUNDED TO SEABOARD IF ITS APPEAL WERE SUCCESSFUL OR CONVERSELY REVERT TO THE MUNICH AIRPORT COMPANY IF THE ORIGINAL COURT DECISION IS EVENTUALLY UPHELD.

3. RE THE APPLICATION OF IATA RESOLUTIONS TO SEABOARD'S TRUCKING ACTIVITIES, THE MEMO ASSERTS THAT IN THE FRG'S VIEW RESOLUTION 507B PRE-SUPPOSES THAT THE CARRIER IN QUESTION HAS TRAFFIC RIGHTS UNDER A BILATERAL AIR AGREEMENT AND EXERCISES THESE RIGHTS. SEABOARD HAS RIGHTS TO MUNICH BUT IN FACT HAS BARELY UTILIZED THEM SINCE IN DECEMBER 1973 NONE OF THE EIGHT SCHEDULED FLIGHTS WERE OPERATED. IN 1974, ACCORDING TO THE FMT, ONLY 6 OF THE 61 SCHEDULED FLIGHTS WERE ACTUALLY FLOWN. THUS, THE FMT REASONS, SEABOARD HAS IN EFFECT VOLUNTARILY WAIVED ITS SCHEDULED SERVICES TO MUNICH; THEREFORE, RESOLUTION 507B CANNOT BE USED AS A BASIS FOR SEABOARD'S TRUCKING ACTIVITIES. THE MEMO THEN TREATS IN SOME DETAIL THE FMT'S INTERPRETATION 512B WHICH DIFFERS MARKEDLY FROM SEABOARD'S. IN THE FMT'S VIEW THE RESOLUTION DOES NOT OBLIGE AIR CARRIERS TO ACCEPT AIR FREIGHT AT THE AIRPORT CLOSEST TO THE POINT OF ORIGIN OF THE SHIPMENT BUT RATHER DEALS WITH THOSE SERVICES WHICH A CARRIER MAY INCLUDE UNDER AIR LIMITED OFFICIAL USE

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CARGO RATES. SINCE, IN THE FMT'S VIEW, AIR CARGO RATES ARE APPLICABLE TO AIR TRANSPORT FROM AIRPORT TO AIRPORT ONLY, SUCH RATES DO NOT COVER TRANSPORT SERVICES (TRUCKING) PRIOR TO AND FOLLOWING AIR TRANSPORT. THESE ADDITIONAL TRANSPORT SERVICES ARE TO BE CONSIDERED CARGO SUPPLEMENTARY FEES AS PROVIDED FOR UNDER THE TERMS OF THE 512B MEETING OF 1965 AND MOST RECENTLY PUBLISHED IN OCTOBER 1973.

4. THE FMT TAKES THE POSITION THAT TO ACCEPT
SEABOARD'S (AND WE PRESUME OTHER CARRIERS')
INTERPRETATION OF 512B WOULD HAVE THE EFFECT
OF PERMITTING AIR CARRIERS TO GRANT PERMANENT

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INFO AMCONSUL MUNICH

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REBATES TO SHIPPERS THUS IMPLYING THAT AIR FREIGHT
RATES AS PUBLISHED WERE UNREALISTICALLY HIGH.
THE FMT FURTHER REBUTS OUR ARGUMENT OF DIS-
CRIMINATION VIS-A-VIS THIRD COUNTRY CARRIERS BY POINTING
OUT THAT SEABOARD BY VIRTUE OF ITS AGREEMENT TO
PAY A SPECIAL FEE IS THE ONLY CARRIER PERMITTED
TO USE THE AIRPORT APRON FOR THE TRANSFER OF AIR
CARGO TO TRUCKS. MOREOVER, SEABOARD WILL BE ABLE
TO CONTINUE ITS PRESENT OPERATIONS AT MUNICH AFTER
MARCH 31, WHILE OTHER CARRIERS MUST NEGOTIATE
NEW RENTAL AGREEMENTS. WITH RESPECT TO LUFTHANSA,
THE FMT ARGUES THAT ALL CARRIERS ENJOY SIMILAR
ADVANTAGES AT HOME, I.E. THE OPPORTUNITY TO USE
DOMESTIC SERVICES FOR THE TRANSPORT OF CARGO TO
CONSOLIDATING GATEWAYS. IN THIS CONNECTION, THE

MEMO REPEATS THE FMT'S OBSERVATION THAT SEABOARD
COULD FLY ITS FULL SCHEDULE TO MUNICH ANYTIME
IT CHOOSES.

5. IN A SUBSEQUENT CONVERSATION WITH EMBOFFS,
FONOFF OFFICIAL KRONECK REITERATED THAT THE FRG
WAS UNABLE TO EXERT ANY INFLUENCE ON THE
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SITUATION SINCE LAND COURT PROCEEDINGS WERE
STILL IN PROGRESS. WE AGAIN POINTED OUT THAT
THE MUNICH AIRPORT'S ACTION IN INTERFERING WITH
TRUCKING BY AN AMERICAN CARRIER OPENED QUESTIONS
OF RECIPROCITY IN VIEW OF LUFTHANSA'S TRUCKING
ACTIVITIES IN THE U.S. KRONECK RESPONDED THAT
IT APPEARED NOTHING FURTHER COULD BE DONE
UNTIL THE GERMAN DOMESTIC LEGAL PROCESS HAD BEEN
COMPLETED.

6. COMMENT: WE ARE PARTICULARLY STRUCK BY THE
FMT'S INTERPRETATION OF IATA RESOLUTION 512B
WHICH SUGGESTS THE FRG BELIEVES IT WOULD HAVE
GROUNDS FOR REQUIRING AIR CARRIERS TO PASS ALONG
TRUCKING COSTS TO SHIPPERS. MOREOVER LOCAL SEA-
BOARD REPS HAVE TOLD US INDUSTRY CIRCLES BELIEVE
THE FRG IS GIVING CONSIDERATION TO ENTERING A
RESERVATION WITH IATA AS REGARDS THE VOLUME OF
TRUCKING PERMISSIBLE UNDER 507B.(FMT OFFICIAL
PAAS MADE A GENERAL REFERENCE TO THE POSSIBILITY
OF FRG RESERVATIONS TO 507B DURING OUR DISCUSSIONS
IN NOVEMBER.) IN THIS CONNECTION, SEABOARD REPS
ARE CURRENTLY ATTEMPTING TO ASCERTAIN LUFTHANSA'S
VIEWS ON THE MATTER IN THE HOPE THE LATTER WOULD
OPPOSE ANY FRG ACTION ON 507B. UNDER THESE CIR-
CUMSTANCES WE WOULD BE INCLINED TO CONSIDER A
FURTHER US DEMARCHE ON THE MUNICH SITUATION ONLY
AFTER THE EFFECTS ON US CARRIERS' INTERESTS OF THE
NEW AIRPORT RENTAL CONTRACTS AND SEABOARD'S FORTH-
COMING APPEAL PROCEEDING ARE KNOWN.
HILLENBRAND

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